

In the United States Court of Federal Claims

No. 07-514 C
(Filed September 26, 2007)

LONNIE RAY WICKLIFFE,	*
Plaintiff,	*
	*
v.	*
	*
THE UNITED STATES,	*
Defendant.	*

ORDER

By the Order, filed July 16, 2007, plaintiff's application for a writ of mandamus was dismissed, and as this was the only relief sought, the litigation was terminated.

By motion, filed August 14, 2007, plaintiff seeks reconsideration of the July 16, 2007 Order. On September 13, 2007, defendant filed its response to plaintiff's motion for reconsideration requesting that it be denied.

It is concluded that plaintiff has presented no viable basis upon which reconsideration of the order denying a writ of mandamus could be granted. Rather, the reconsideration motion may be construed to incorporate an attempt to assert claims for compensation based upon plaintiff's military service, which terminated with a 1970 discharge from active duty and the expiration of his reserve obligation in 1975.

As noted in defendant's response, filed September 13, 2007, plaintiff does not rest the compensation claims he now, on reconsideration, attempts to assert on any statute or regulation which would mandate the payment of money by the United States. Thus, no matter within the jurisdiction of the court, pursuant to 28 U.S.C. § 1491, is raised. *See Fisher v. United States*, 402 F.3d 1167, 1172 (Fed. Cir. 2005).

If plaintiff is attempting to assert a military pay claim based on a statute which could mandate the payment of money, such as for military disability pay pursuant to 10 U.S.C. § 1201, he has not pleaded a prior administrative decision by the military on the claim which

is, with limited exceptions, a necessary prerequisite for consideration of the matter by this court. *Chambers v. United States*, 417 F.3d 1218, 1224 (Fed. Cir. 2005).

Moreover, in view of the 1990 denial, by the Board of Veterans' Appeals, of plaintiff's claim for service connected post-traumatic stress disorder, it is highly likely that a similarly based claim for military disability pay, if now asserted, would be barred by 28 U.S.C. § 2501. *See Lonnie Wickliffe a/k/a Mutee El-Amin v. Jesse Brown* Order, filed May 26, 1993 (Fed. Cir. No. 93-7037). Pursuant to 28 U.S.C. § 2501, a claim against the United States must be filed in this court within six years after it first accrues. While a military disability pay claim usually first accrues with a final military administrative decision on the matter, the veteran's knowledge of the existence and extent of his condition may accrue the claim at an earlier date in the absence of such a military decision. *Chambers* at 1226. Plaintiff's earlier claim for service-connected veteran's benefits may well have demonstrated the knowledge necessary to accrue a military disability pay claim at that same time, which is somewhat in excess of six years prior to the date the current litigation was initiated. Any claim for military compensation other than disability pay would have first accrued on plaintiff's discharge from the service in 1970 and the assertion of such a claim would long since have been barred. *Martinez v. United States*, 333 F.3d 1295 (Fed. Cir. 2003).

Finally, plaintiff appears to have pleaded, in the suit he initiated in the United States District Court for the Southern District of Indiana, No. 1:07-CV-00214 LJM-JMS, the compensation claims he now apparently attempts, on reconsideration, to assert in the instant litigation. This district court action was dismissed with prejudice for failure to prosecute on June 8, 2007, with reconsideration denied on June 18, 2007. A dismissal with prejudice for failure to prosecute is a determination on the merits of the matter so that, absent obtaining relief from the final District Court Judgment, any assertion by plaintiff of these claims in the instant litigation would be barred by *res judicata*. *See International Nutrition Co. v. Horphag Research, Ltd.*, 220 F.3d 1325, 1329 (Fed Cir. 2000); *Aldridge v. United States*, 67 Fed. Cl. 113, 122 (2005).

In these circumstances, no viable basis for reconsideration has been set forth and plaintiff's motion, filed August 14, 2007, is **DENIED**.

James F. Merow
Senior Judge